IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

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C.R.NO.4955 OF 2007. (O&M)
DATE OF DECISION: SEPTEMBER 27, 2007.

***

Harjinder Singh and others.

Petitioners.

VS

Makhan Singh and others.

Respondents.

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BEFORE: HON'BLE MR. JUSTICE R.S.MADAN.

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PRESENT: Mrs. Sushma Chopra, Advocate, for the petitioners.

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R.S.Madan, J (Oral)

I have heard the learned counsel for the petitioners and have carefully gone through the order dated May 01, 2007 (Annexure P-1) passed by the learned Additional Civil Judge (Senior Division), Nakodar.

At the very out-set, the learned counsel for the petitioners contended that the learned Additional Civil Judge (Senior Division), Nakodar, has erred in striking off the defence of the petitioners because they have failed to file the written statements within the statutory period of 90 days, as provided under Order VIII Rule 1 of the Code of Civil Procedure (hereinafter referred to as the Code). She contended that the statutory period of 90 days as provided in the Code is directive in nature and not mandatory. In support of her contention she placed reliance on *Salem Advocate Bar Association, Tamil Nadu* Versus *Union of India, A.I.R 2005 (S.C.) 3353,* wherein their Lordships of the Hon'ble Supreme Court observed as under:-

> ***"In construing the provision of Order VIII Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 of Order VIII, the***

> ***court in its discretion would have power to allow the defendant to file written statement even after expiry of period of 90 days provided in Order VIII Rule 1. There is no restriction in Order VIII Rule 10 that after expiry of ninety days , further time cannot be granted. The Court has wide power to 'make such order in relation to the suit as it thinks fit'. Clearly, therefore, the provision of Order VIII Rule 1 providing for upper limit of 90 days to file written statement is directory. Having said so, we wish to make it clear that the order extending time to file written statement cannot be made in routine. The time can be extended only in exceptionally hard cases."***

Keeping in view the observation made by the Hon'ble Supreme Court in Salem's case (supra), the order dated May 01, 2007 (Annexure P-1) passed by the learned Additional Civil Judge (Senior Division), Nakodar, is set aside.

The Revision petition is accepted.

The petitioners through their counsel are directed to file the written statements in the court of Additional Civil Judge (Sr. Division), Nakodar, on or before October 17, 2007, subject to payment of Rs. 5000/- as costs, to be paid to the plaintiff-respondents in equal shares, so that the case of the petitioners-defendants should not be allowed to be disposed of unheard.

In the event of failure on the part of the petitioners, either to file the written statements or to pay the costs, the order dated May 01, 2007 (Annexure P-1) passed by the Additional Civil Judge (Sr. Division), Nakodar, shall stand restored.

A copy of this order be sent to the Additional Civil Judge (Sr. Division), Nakodar, for compliance.

September 29, 2007 **(R.S.MADAN)**
Malik **JUDGE**